IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MICHAEL F. CAHILL	:	CIVIL ACTION
	:	
v.	:	
	:	
STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, et al.	:	NO. 00-4836

MEMORANDUM AND ORDER

BECHTLE, J. MAY , 2001

Presently before the court is the motion of defendants State Farm Mutual Automobile Insurance Company, State Farm Fire and Casualty Company and State Farm Life Insurance Company (collectively "Defendants") for summary judgment and plaintiff Michael F. Cahill's ("Plaintiff") response thereto. For the reasons set forth below, the court will grant the motion.

I. BACKGROUND

Plaintiff, a retired State Farm insurance agent, filed the instant Complaint in the Court of Common Pleas of Philadelphia County on September 8, 2000, alleging that Defendants unlawfully discriminated against him in regard to his voluntary retirement in 1995. Defendants removed the case to this court on September 22, 2000.

In 1993, Plaintiff announced his intention to retire in 1995 at age 60. (Cahill Dep. at 6 & 8.) Sometime in 1995, Defendants introduced the State Farm 2000 Agent Termination for Retirement Program. (Compl. ¶ 7.) This program provided additional

financial incentives to agents 65 years or older to retire. (Aff. of Ward Lancaster at 3; Dep. of John Kelly at 42.) It also, temporarily, offered agents who retired between the ages of 55 and 59 the opportunity to receive extended termination payments, actuarially reduced according to age - a benefit that had been available to Plaintiff's 60 to 65 age group for some time. (Lancaster Aff. at 3-4; Kelly Dep. at 42-43; Cahill Dep. at 21.) Plaintiff's Complaint is based on his assertion that the 1995 retirement program provided "extra benefit[s]" to other age groups, but not his own. (Compl. Ex. D; Cahill Dep. at 58, 84 & 96.)

Plaintiff alleges three counts premised on violations of the Age Discrimination in Employment Act ("ADEA"), 29 U.S.C. § 621-34; the Older Workers Benefit Protection Act of 1990 ("OWBPA"), Pub. L. No. 101-433, 104 Stat. 978; and the Pennsylvania Human Relations Act ("PHRA"), 43 Pa. Cons. Stat. Ann. §§ 951-63. (Compl. ¶¶ 11-19.) Defendants filed a motion to dismiss on October 3, 2000 and a motion for summary judgment on February 9, 2001. For the reasons set forth below, the motion for summary judgment will be granted.

II. LEGAL STANDARD

Summary judgment shall be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file,

together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). A factual dispute is material only if it might affect the outcome of the suit under the governing law. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). Whether a genuine issue of material fact is presented will be determined by asking if "a reasonable jury could return a verdict for the non-moving party." Id. In considering a motion for summary judgment, "[i]nferences should be drawn in the light most favorable to the non-moving party, and where the non-moving party's evidence contradicts the movant's, then the non-movant's must be taken as true." Big Apple BMW, Inc. v. BMW of N. Am., Inc., 974 F.2d 1358, 1363 (3d Cir. 1992) (citation omitted).

III. DISCUSSION

Defendants assert that the motion for summary judgment should be granted because: Plaintiff was an independent contractor rather than an employee and thus lacks standing to sue; and even if Plaintiff had standing, he failed to timely exhaust mandatory administrative remedies.[1]

[1] The court has jurisdiction over the ADEA and OWBPA claims under 28 U.S.C. § 1331 (federal question) and supplemental jurisdiction over the PHRA claim under 28 U.S.C. § 1367.

It is undisputed that the ADEA and the OWBPA apply only to employees and not to independent contractors. 29 U.S.C. §§ 623(a) & (f); Strange v. Nationwide Mut. Ins. Co., 867 F. Supp. 1209, 1212 (E.D. Pa. 1994) (citing EEOC v. Zippo Mfg. Co., 713 F.2d 32, 35 (3d Cir. 1985)). Defendants contend that Plaintiff was an independent contractor. In his Complaint, Plaintiff does not allege that he was an employee. However, in his Memorandum of Law opposing Defendants' motion for summary judgment, Plaintiff, without analysis, conclusorily states that he was an employee because the Defendants "treated [him] as an employee." Both parties cite to the Supreme Court's decision in Nationwide Mutual Insurance Co. v. Darden, 503 U.S. 318, 323 (1992), to support their positions.

In Darden, the Court adopted a common-law agency test to determine independent contractor status, considering such factors as:

> 1) the skill required; 2) source of the instrumentalities and tools; 3) location of the work; 4) duration of the relationship between the parties; 5) whether the hiring party has the right to assign additional projects to the hired party; 6) the extent of the hired party's discretion over when and how long to work; 7) the method of payment; 8) the hired party's role in hiring and paying assistants; 9) whether the work is part of the regular business of the hiring party; 10) whether the hiring party is in business; 11) the provision of employee benefits; and 12) the tax treatment of the hired party.

Id. at 323-24.

However, unlike Darden, wherein the plaintiff alleged an employee relationship, Plaintiff in the instant case conceded: "I am not an employee." (Cahill Dep. at 99.) Further, Plaintiff attached a copy of his appointment and agency agreement to his Complaint. These documents state that Plaintiff was "an independent contractor for all purposes" and had "chosen this independent contractor relationship." (Compl. Exs. A & B.) They also state that Plaintiff had "full control of [his] activities, with the right to exercise independent judgment as to time, place, and manner of soliciting insurance, servicing policyholders, and otherwise carrying out the provisions" of the agreement. Id. Ex. B § 1, ¶ 2; Cahill Dep. at 25, 28-33. They show that Plaintiff did not receive a salary, but was entitled to compensation through a commission formula. (Compl. Ex. B, Schedule of Payments Referred to in State Farm Agent's Agreement.) Finally, Plaintiff acknowledged that the intent of the agency agreement was to consider him an independent contractor and not an employee. (Cahill Dep. at 24-41.)[2] Thus, the court concludes that there exists no genuine dispute of material fact and that no reasonable jury could find that Plaintiff was an employee rather than an independent contractor.

[2] Courts have consistently held that insurance agents are not employees for purposes of employment discrimination suits. See, e.g., Barnhard v. New York Life Ins. Co., 141 F.3d 1310, 1313 (9th Cir. 1998) (citing cases).

Additionally, it is undisputed that Plaintiff did not file any action alleging discriminatory practices with the Equal Employment Opportunity Commission ("EEOC") or the Pennsylvania Human Relations Commission ("PHRC"). Thus, Plaintiff failed to exhaust his administrative remedies, a mandatory prerequisite to bringing action in this court. 29 U.S.C. § 626; Love v. Pullman, 404 U.S. 523, 524 (1972) (stating that claimant must first pursue administrative relief); Woodson v. Scott Paper Co., 109 F.3d 913, 925 (3d Cir. 1997) (stating that failure to file timely complaint with PHRC precludes judicial remedies under PHRA).[3]

IV. CONCLUSION

For the reasons set forth above, Defendants' motion for summary judgment will be granted.

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[3] Although it need not reach the issue of the statute of limitations, the court notes that Plaintiff cites Webster v. Great Am. Ins. Co., 544 F. Supp. 609, 611 (E.D. Pa. 1982) to support his assertion that the six year limitations period set forth in 42 Pa. Cons. Stat. Ann. § 5527 applies to his PHRA claim. However, since Webster was decided, Pennsylvania state courts have addressed the issue, determining that claims of discrimination under the PHRA are subject to a two-year statute of limitations under section 5524(7). Raleigh v. Westinghouse Elec. Corp., 550 A.2d 1013, 1014 (Pa. Super. Ct. 1988) (summary judgment appropriate when plaintiff did not institute action within two years of discharge or dismissal of complaint by PHRC); see also Northview Motors, Inc. v. Chrysler Motors Corp., 227 F.3d 78, 91 (3d Cir. 2000) (citing Raleigh) (recognizing that PHRA claims are subject to two-year statute of limitations). Here, Plaintiff admitted that he was aware of the alleged discriminatory conduct in "early 1995," that nothing prevented him from filing an administrative claim or lawsuit, yet he failed to do so. (Cahill Dep. 91-94.)

An appropriate order follows.

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ORDER

AND NOW, TO WIT, this day of May, 2001, upon consideration of the motion of defendants State Farm Mutual Automobile Insurance Company, State Farm Fire and Casualty Company and State Farm Life Insurance Company (collectively "Defendants") for summary judgment and plaintiff Michael F. Cahill's ("Plaintiff") response thereto, IT IS ORDERED that said motion is GRANTED.

Judgment is entered in favor of defendants State Farm Mutual Automobile Insurance Company, State Farm Fire and Casualty Company and State Farm Life Insurance Company and against plaintiff Michael F. Cahill on all counts.

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LOUIS C. BECHTLE, J.